

118055

21447

Kilmer

## DECISION



THE COMPTROLLER GENERAL  
OF THE UNITED STATES  
WASHINGTON, D.C. 20548

FILE: B-198545.6

DATE: April 12, 1982

MATTER OF: Educational Electronics Corporation

## DIGEST:

1. Protest that discussions, which consisted of a letter to the protester pointing out areas where protester's proposed equipment did not meet RFP specifications, were inadequate is denied because agency is not obligated to "compromise" with offeror by relaxing its specification in disputed areas. Agency is only obligated to bring deficiencies to the attention of offerors and to permit them to revise their offers.
2. GAO will not object to agency's rejection of protester's offer because the recording equipment proposed had a quarter-track tape format while RFP specifications provided that equipment must be in a half-track format because protester has not shown that agency's position that quarter-track equipment will not fulfill its needs is unreasonable.

Educational Electronics Corporation protests the rejection of its proposal under request for proposals (RFP) No. DAAG08-81-R-0118 issued by the Sacramento Army Depot, U.S. Army Materiel Readiness Command for five language laboratory systems. We deny the protest on the basis that Educational failed to comply with a number of the RFP specification requirements.

The Army issued the solicitation on February 7, 1981, to procure complete cassette language laboratory systems for use overseas, each consisting of one instructor's console and 20 student stations, with necessary cassette tape recorders, controls, and booths. Offerors were advised that award would be made to the offeror submitting the lowest priced, technically acceptable offer.

The agency evaluated the four offers received and by letter of May 4 informed Educational that its offer contained 16 technical deficiencies. The major deficiency listed was Educational's use of cassette recorders with a quarter-track tape format. The RFP specifications called for recorders with a half-track tape format. While Educational's May 7 response attempted to explain its offer in some respects and to alter it to meet other of the agency's criticisms, it consisted mostly of a detailed justification of its use of the quarter-track format. The protester maintained that cassettes from its quarter-track machines can be reproduced on the Government's half track equipment and that Educational's quarter-track equipment will accept the Government's cassettes produced on its half-track equipment.

On June 11, the Army determined Educational's amended offer technically unacceptable principally because its quarter-track equipment did not meet the RFP's requirement for half-track recorders. The agency also noted that Educational's equipment contained markings of baked epoxy enamel while the RFP required etching or engraving, that the rewind speed of Educational's equipment was too slow and that its equipment did not have the required recording level indicators or recording level controls. On July 2, the agency awarded a contract for the systems to CEL Systems, Inc. as the lowest priced technically acceptable offeror. Educational first protested the rejection of its offer to the Army. The agency denied the protest by letter of July 9, stating that Educational's proposal was properly rejected mainly because that firm failed to offer equipment in the half-track format as specified in the RFP and in the agency's deficiency letter. Educational then filed its protest with our Office.

The protester has submitted extensive materials which it maintains show that its proposed recorder using a quarter-track cassette format will satisfy all performance aspects of the specification, including compatibility with the Government's dual channel and half-track format master cassettes, even though its recorder is not specifically designed to use dual

channel, half-track tape cassettes. In addition, Educational challenges certain aspects of the specification, particularly the need for individual recording level controls and indicators at each student station. Finally, Educational questions the Army's refusal to modify the technical requirements of the specification during negotiations, asserting that compromise is fundamental to true negotiation.

Educational complains that real "negotiations" were not conducted but that the agency only informed Educational of the specification requirements its equipment did not literally meet. The protester maintains that in order for discussions to be meaningful the agency must be willing to compromise and either change or relax some of its rigid specification requirements in response to an offeror's willingness to also change some aspects of its offer.

The form and extent of discussions necessary to satisfy the requirement that discussions be meaningful is a matter of judgment primarily for determination by contracting officials and is not subject to question by our Office unless clearly shown to be without a reasonable basis. BDM Corporation, B-201291, June 26, 1981, 81-1 CPD 532. An agency is not obligated to "compromise" its specification requirements to make discussions meaningful; rather, the agency is obligated, in most cases, to bring deficiencies to the attention of offerors and to permit them to revise their proposals. Food Science Associates, Inc., B-183054, April 30, 1977, 75-1 CPD 269. Here, Educational was clearly informed of all the areas in which its offer did not meet the specification requirements and was given the opportunity to revise its offer. The agency was not required to do more. See National Veterans Law Center, B-198738, February 2, 1981, 81-1 CPD 58.

We recognize that Educational maintains that the agency's interpretation of the RFP specification requirements was too rigid and that its equipment will meet the agency's legitimate needs. In this connection, Educational offers extensive evidence to demonstrate that its proposed quarter-track equipment complies with the performance requirements of the specification, including compatibility with half-track master tapes. Educational

further argues that its epoxy labeling is an acceptable substitute, fully as durable and serviceable as the required etched or engraved labels, and that recording level indicators and controls in the student stations are unnecessary. By implication, the protester also questions the Army's need for rewind and fast forward capability at the speed stated in the specification.

It is not, however, the function of our Office to evaluate the technical aspects of offers or to determine what type of equipment an agency must accept. The determination of the needs of the Government and the method of accommodating those needs is primarily the responsibility of the procuring agency, Health Management Systems, B-200775, April 3, 1981, 81-1 CPD 255, and we will not disturb an agency's judgment in this area unless it is shown to be arbitrary or in violation of procurement statutes or regulations. See Buffalo Organization for Social and Technological Innovation, Inc., B-196279, February 7, 1980, 80-1 CPD 107.

Educational's offer simply failed to satisfy a number of the RFP specification requirements and the agency maintains the Educational equipment will not meet its needs. Although Educational argues that its admittedly noncompliant equipment will, in fact, perform satisfactorily, we have no legal basis upon which to question the agency's judgment. In any event, the specification requirements were apparent on the face of the solicitation; therefore, any objection that Educational had to the basic RFP requirements should have been raised prior to the date set for receipt of initial proposals. See Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1981).

The protest is denied.

*Hilton J. Aronson*  
for  
Comptroller General  
of the United States